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MISSOURI RIVER DISPUTE HEADS TO US SUPREME COURT

BISMARCK – Taking the next step in the controversy over Missouri River management, Attorney General Wayne Stenehjem has asked the United States Supreme Court to intervene. Stenehjem has filed a petition for certiorari, asking the high court to review an Eighth Circuit Court of Appeals decision regarding the U.S. Army Corps of Engineers' management of the river in the spring of 2002.

The case involves a suit the state filed against the Corps of Engineers in 2002, asserting that the Corps was unlawfully harming the lake's walleye fishery through a river management program that drains Lake Sakakawea to dangerously low levels during the spring spawning season. The State's walleye rely on the rainbow smelt for food, and the smelt need a steady lake level to survive. The Corps of Engineers appealed to the Eighth Circuit Court of Appeals, which overturned two lower court decisions this past summer and allowed the Corps to continue its draw down procedure.

At the heart of the matter is whether the Flood Control Act of 1944 gives navigation priority over recreation uses. Stenehjem believes it does not. He stated, "With all due respect, I believe the 8th Circuit Court misinterpreted the Flood Control Act, and navigation is not entitled to priority over recreation interests. I maintain the Flood Control Act gives these uses equal priority." In his petition Stenehjem asked the Supreme Court to overturn the Eighth Circuit decision and clarify the priority issue. He noted, "In light of the overwhelming economic value of recreation on the Missouri River to upstream states, it is imperative to take this case to the Supreme Court."

While acknowledging that the Supreme Court is not obligated to hear the petition, Stenehjem explained that the case involves several unique issues, which may be of interest to the court. "The Missouri River is one of the country's most important natural resources. Our case involves the proper management of this precious resource and the settlement of decades of fighting among the states which share its banks," Stenehjem concluded.

The petition for certiorari was filed jointly by North and South Dakota. It likely will be several months before the Court rules on whether it will hear the case. North Dakota's petition for certiorari was authored chiefly by Charles Carvell, Director of the Natural Resources and Indian Affairs Division of the Attorney General's office.

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